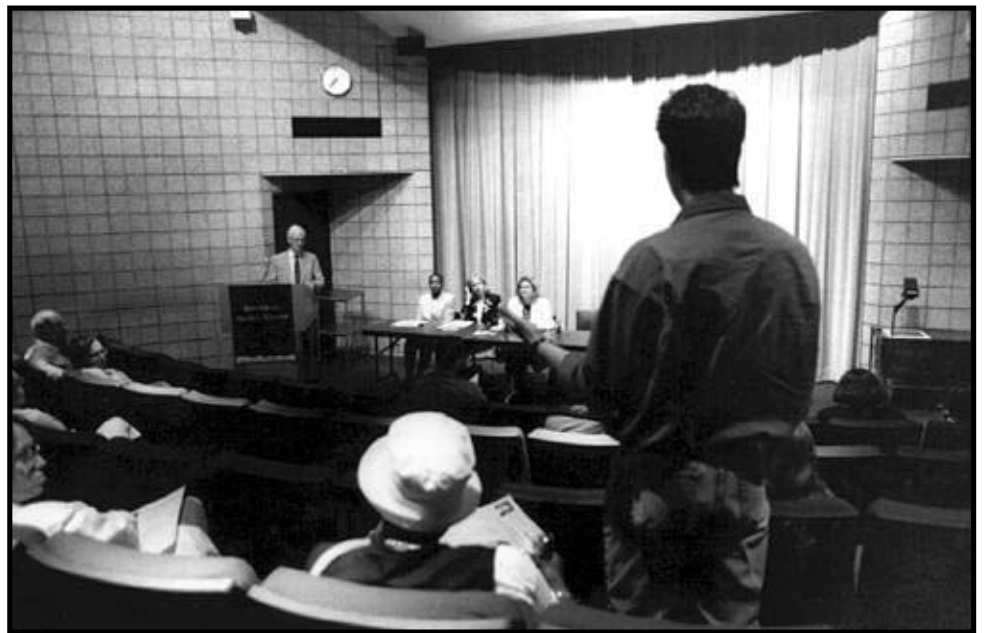




National Institute of Justice

P r o g r a m F o c u s

The Manhattan District Attorney's Narcotics Eviction Program



The Manhattan District Attorney's Narcotics Eviction Program

By Peter Finn

For one and a half years, tenants in an apartment building on Manhattan's Lower East Side complained repeatedly to the police about members of a family conducting illegal drug sales from their apartment. Police arrested the tenant, a woman living with her four children aged 15 to 21, for possession of heroin and narcotics paraphernalia. Police testified that they observed a handgun and 21 glassine envelopes of

heroin "cascading" out the apartment window. Inside her apartment, police seized an electronic currency counting machine, 2 triple beam scales, a bullet-proof vest, 20 to 30 pairs of sneakers (used by drug runners), a flare gun, 2 walkie-talkies, and nearly \$23,000 in cash. Yet the family continued to use the apartment as a base for selling drugs.

Eventually, the Manhattan District Attorney's Narcotics Eviction Program petitioned the court to evict the tenant under the authority of the Real Property Actions and Proceedings Law, a State civil statute. The tenant argued that she should not be evicted because police did not find any drugs or evidence of drug sales in her apartment. Judge Peter Tom, however, authorized the eviction because the civil statute does not require the district attorney to prove that the tenant committed a specific crime. The district attorney only has to present evidence warranting the conclusion that the premises are being used for an illegal business. The family was evicted from the apartment after trial, and the landlord re-rented the unit to another tenant who left his neighbors in peace.

In many towns and cities, drug dealing in apartment buildings is a major problem that not only disrupts the lives of law-abiding tenants but also ties up criminal justice system resources. Arresting and prosecuting drug traffickers in these apartment buildings often fail to solve the problem because the crime cannot be proved beyond a reasonable doubt. Even if drug dealers are convicted and jailed, the process may take over a year. Because they are often not the tenant of record, they may be quickly replaced by other drug traffickers. However, as the vignette above illustrates, using a civil, rather than

Highlights

Drug dealing in urban apartment buildings disrupts the lives of law-abiding tenants and ties up criminal justice system resources. In the past, arresting and prosecuting drug traffickers have not brought much relief since tenants' fear of testifying led to failure to convict traffickers or other drug traffickers quickly replaced those who were sent to jail.

In 1987 Manhattan District Attorney Robert M. Morgenthau heard about an unusual case in which drug dealers in an apartment building were evicted on the basis of the Real Property Actions and Proceedings Law. Based on this case, he created the Narcotics Eviction Program—a program that systematically uses this civil statute to remove drug dealers from residential and commercial buildings.

Between June 1988 and August 1994, the program evicted drug dealers from 2,005 apartments and retail stores. The program's success stems from the following characteristics of the program and its operations:

- Witnesses can give the police anonymous tips about drug dealing without having to testify in court. As a result, witnesses have usually not been afraid to provide evidence.

- Although the district attorney can undertake an eviction proceeding if necessary, the program gives landlords a strong incentive to take action themselves because it furnishes them with police laboratory analyses and search and seizure reports. It also arranges for police witnesses to appear at civil trial and provides a staff attorney or paralegal to assist the landlord's attorney.

- Because the proceedings are civil, not criminal, the judge may authorize an eviction based on a preponderance of evidence that drug dealing is occurring. No arrest is necessary to meet this standard of proof—just evidence of an illegal drug business. The summary nature of the court proceeding means that trials are rarely delayed or postponed and typically last only 15 minutes to an hour.

- In most cases, the Manhattan drug dealers have not been official tenants but have used rented premises for drug trafficking with the leaseholders' consent. Under the Narcotics Eviction program, the leaseholder can still be evicted if the evidence shows he or she knew that an illegal business was being conducted from the apartment.

PROGRAM FOCUS

criminal, statute, the Manhattan District Attorney's Narcotics Eviction Program can permanently rid apartment buildings of drug dealers.

For years, police officers arrested drug dealers only to watch them return or be replaced in the apartment almost immediately. Now they can remove drug dealers for good.

How the Program Works

The eviction process involves three principal steps: screening the case, notifying the landlord and tenant, and going to court (see figure 1). The program asks the landlord to begin eviction proceedings against tenants who are using or allowing others to use their apartment to sell drugs. If the landlord refuses to act, the district

attorney's office has the authority under the Real Property Actions and Proceedings Law to initiate eviction proceedings in court as though it were the owner or landlord of the premises (see "Statutory Basis for Eviction," page 4).

Screening cases carefully. The Narcotics Eviction Program learns about most cases by reviewing every search warrant that the police in Manhattan execute for suspected narcotics offenses. The program also obtains referrals directly from the police department, individual residents, tenant organizations, and landlords and their attorneys.

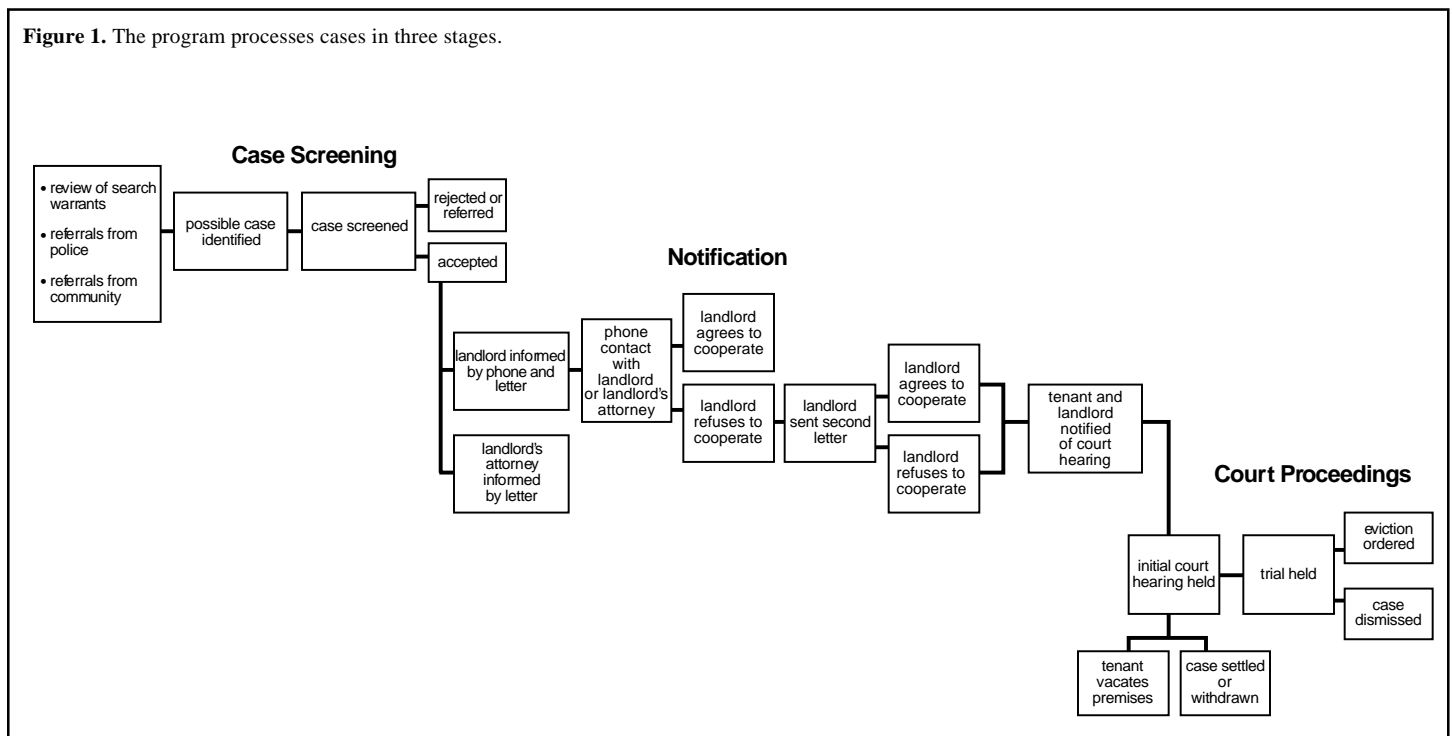
Typically, the drugs seized must weigh at least an eighth of an ounce—a felony level weight in New York. According to Gary J. Galperin, the Assistant District Attorney who runs the program, "We con-

sider pursuing a case if we find that drugs were seized from a residential or commercial unit, and the police records reveal evidence consistent with the operation of a drug business. The Real Property Actions and Proceedings Law does not authorize government action for illegal personal drug use."

Even if the police do not recover any drugs, the program may still bring civil action if there is other convincing evidence that the premises are being used in connection with a narcotics operation. Such evidence may include materials for processing and packaging drugs or records of drug transactions.

During the early years of the program, the district attorney was criticized when the program tried to evict tenants whom the public and the tenants' attorneys regarded as innocent victims, that is, people who

Figure 1. The program processes cases in three stages.



Statutory Basis for Eviction

Section 715 of the New York State Real Property Actions and Proceedings Law is the legal basis for the District Attorney's Narcotics Eviction Program to evict tenants from apartments or commercial spaces where drug dealing is occurring. This law was enacted in 1868 to abate "bawdy house" activity, and Section 715 was amended in 1947 to include "any illegal trade, business or manufacture." Pertinent sections state:

An owner or tenant...of any premises within two hundred feet from other...real property used or occupied in whole or in part as a bawdy house...or for any illegal trade, business or manufacture..., or any duly authorized enforcement agency of the state or of a subdivision thereof...may serve personally upon the owner or landlord of the premises so used or occupied, or upon his agent, a written notice requiring the owner or landlord to make an application for the removal of the person so using or occupying the same. If the owner or landlord or his agent does

not make such application within five days thereafter; or, having made it, does not in good faith diligently prosecute it, the person, corporation or enforcement agency giving the notice may bring a proceeding under this article for such removal as though the petitioner were the owner or landlord of the premises.... Proof of the ill repute of the demised premises...or of those resorting thereto shall constitute presumptive evidence of the unlawful use of the demised premises required to be stated in the petition for removal. Both the person in possession of the property and the owner or landlord shall be made respondents in the proceeding.

The statute covers other illegal businesses besides drug dealing. The Narcotics Eviction Program has used the law against prostitution, gambling, weapons trafficking, and other criminal operations. However, this report spotlights only the program's principal focus—drug dealing.

From the Landlord's Perspective

"One day," according to Steven Green, the owner of a Manhattan apartment building, "the DA called me and said there had been a drug-related arrest on my property, and a week later I got a form letter with all the details telling me what would happen if I failed to evict the tenants. Actually, I already suspected the tenant was dealing, and the letter confirmed it. But I wasn't going to take any action because the landlord-tenant courts are extremely pro-tenant—you just can't get an eviction for a tenant who continues to pay the rent. But the DA's letter made clear I could get the dealers out without a lot of time and money.

"So I sent the material to my attorney, who went to court. We went to a special court that hears these cases quickly. And the DA, not my attorney, made the arrangements for the police officer to show up to act as my witness.

"The dealer didn't show up at the court hearing, but he did stay in the apartment until the very last minute—until the marshal showed up—so he could continue making money right up to the end. I had to pay for my attorney's time, for the marshal, and for the new locks, but the whole thing, from the time I got the DA's letter to the eviction, lasted only from January 4 to March 31. So it really worked out well."

did not agree to—much less participate in—drug dealing.

An example of this was a case involving a 68-year-old woman and her two daughters. The landlord argued that although the mother was not selling drugs herself, she knew that her daughters were trafficking and refused to stop them. The judge ruled that the tenant may not have been aware of the drug activity in view of her advanced age, poor health, and apparent lack of sophistication. In addition, the drugs were sold in the early morning hours, and they were never left in open view of the mother. As a result of these considerations, the judge allowed the tenant to remain on condition that her daughters not return to the apartment.

On other occasions, evictions have been challenged because the targeted individual was too old or too young, would become homeless, or had lived in the apartment for many years. Although these challenges have all been unsuccessful, the program has been sensitive to these criticisms, going so far as to help innocent victims find other suitable housing.

Therefore, concerns about the eviction of innocent victims are heard less frequently today. According to Gary Galperin, "the office is careful to proceed only when the participation, knowledge, or acquiescence of every tenant is clear" in order to avoid evicting blameless people or even subjecting them to a lawsuit.

Indeed, the program has initiated eviction proceedings in less than half of all the cases it has screened—2,150 out of 5,305 cases to date (see figure 2). As a result, tenants who have been sued have rarely been able to refute the charges brought against them in court. For example, when a woman claimed she used a triple beam scale for cooking in order "to

PROGRAM FOCUS

weigh the proper amount of paprika and basil,” the judge responded, “That’s just not credible.”

Notifying tenants and landlords. The Narcotics Eviction Program first calls the landlord and then sends the landlord and the landlord’s attorney a letter informing them of the suspected drug dealing. The letter notes that a police search warrant produced evidence that the premises were being used for selling narcotics and requests that the landlord commence eviction proceedings. Included with each letter are a copy of the statute, the search warrant or court complaint, a description

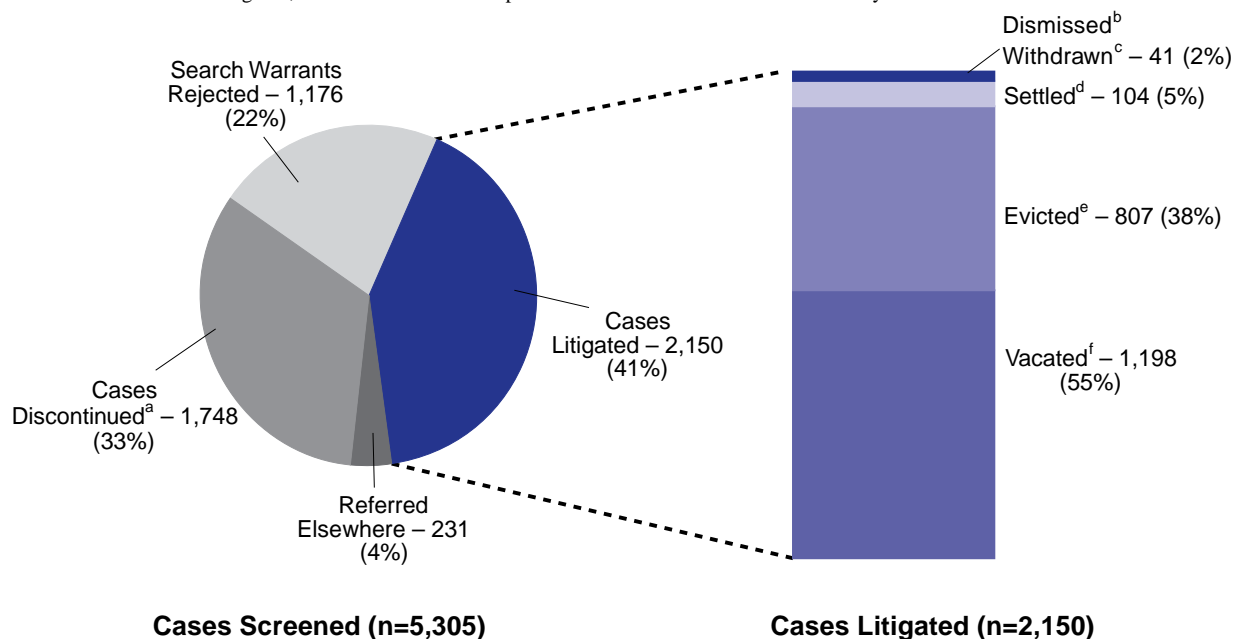
of incriminating property recovered in the search, and the police laboratory report on any drugs that were seized.

About 2 weeks later, if the landlord or landlord’s attorney has not contacted the program, a paralegal telephones to make sure the landlord and the landlord’s attorney have received the materials and begun eviction proceedings in court. If not, the program sends a second letter warning that if the landlord does not confirm by a specific date that eviction proceedings have begun, the district attorney’s office will “commence eviction proceedings as the petitioner” with both the tenant and

landlord as respondents—the targets of the civil action. The second letter warns that if the court rules in the program’s favor, the judge may fine the landlord \$5,000 and order reimbursement of the district attorney’s costs for the case. In most cases, the landlord agrees after the first or second letter to initiate eviction proceedings (see “From the Landlord’s Perspective,” page 4).

Whereas the program expects private landlords to use their own attorneys to handle evictions, program staff handle all cases involving the New York City Housing Authority’s 55,000 subsidized rental

Figure 2. In over half the cases litigated, the tenant vacated the apartment before court action was necessary.



Note: Data are from June 1988 to August 1994.

^a Discontinued: the program opened the case, but dropped it before it was filed in court.

^b Dismissed: the judge dismissed the case.

^c Withdrawn: the program dropped the case after it was filed in court (e.g., for lack of sufficient evidence).

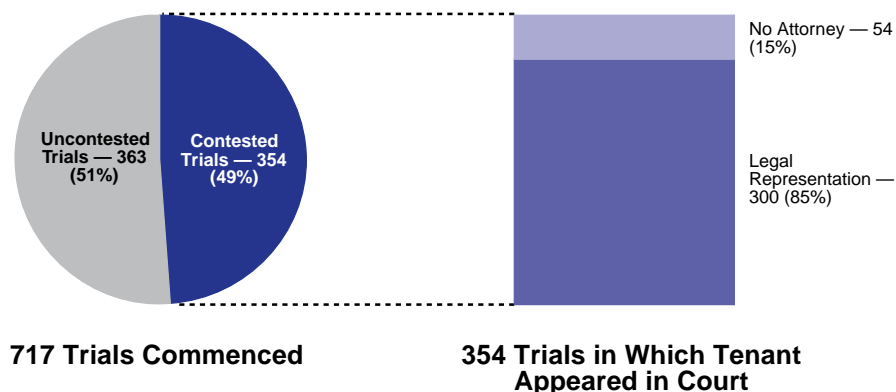
^d Settled: the judge and parties agreed to a settlement of the case without authorizing an eviction, as when the judge allows the tenant of record to remain because the drug dealers have left and will not be allowed to return.

^e Evicted: the judge authorized removing the tenant from the apartment, and the tenant left or the city marshal executed the eviction.

^f Vacated: the tenant left the premises before court action became necessary.

PROGRAM FOCUS

Figure 3. At trial, half the cases are uncontested by the tenant.



Note: Data are from June 1988 to August 1994.

units in Manhattan. The authority has been very pleased with the results (see “Housing Authority Welcomes the Program’s Assistance,” page 8). The Narcotics Eviction Program also handles cases for cooperative landlords who cannot afford to hire a lawyer or who justifiably fear retaliation by drug dealers.

The landlord or district attorney’s office also gives the tenant ample notice of the proceedings and an opportunity to contest them. Two separate attempts are made to hand-serve a notice. If no one is home the second time, a notice is posted on the apartment door and then mailed certified and first class. The judge is scrupulous about making sure this procedure is followed and dismisses cases in which the petitioner has not provided proper notice.

Going to court. At the initial court appearance, the judge discusses the case with the tenant, landlord, and program attorney or paralegal (available to assist the landlord’s attorney when the district attorney is not prosecuting the case). The judge identifies any issues that are in dispute and then adjourns the case for trial. The judge gives the tenant the opportunity to hire a private attorney or obtain counsel from a legal services agency.

At trial, the landlord or the program’s as-

sistant district attorney must prove by a preponderance of evidence that an illegal business is being conducted in the apartment. If, as is usually the case, the tenant of record is not the accused drug dealer, the landlord or district attorney must also prove that the tenant knew about the illegal activity and did not try to stop it.

The Narcotics Eviction Program always provides a police officer who has entered the apartment to testify that incriminating evidence was found during the search. However, according to Galperin, “We almost never provide the names of undercover police officers or ask them to testify in order not to compromise their safety or their value in future criminal investigations by blowing their cover.” Similarly, neighbors are rarely asked to testify because police witnesses and documents usually provide sufficient evidence of an illegal business.

More often than not, the tenant fails to appear in court, and the trial becomes an uncontested hearing (see figure 3). Even if the tenant does not show up, the judge still holds a hearing and requires testimony from the police witness and the property owner. Then, if the evidence is sufficient, the judge signs a “judgment of possession,” which returns the apartment

to the control of the landlord. The landlord then arranges for a city marshal to execute the eviction.

Because immediate action is needed when drug dealers are operating in an apartment building, State statute authorizes the judge to conduct these cases as a summary proceeding. The judge rarely allows postponements unless a tenant’s attorney demonstrates ample need for delay. Less discovery is permitted in these proceedings than in criminal or other civil proceedings; the judge does not allow any “fishing expeditions.” As a result, most trials take only 15 minutes to an hour.

The total time from case acceptance to the removal of a drug dealer is usually 3 to 5 months. Judge Eileen Bransten says, “If there is a finding that drugs are being sold from an apartment, that means that the innocent tenants in the apartment building are suffering and that drug dealing could spread if left unchecked. So drug eviction cases should be dealt with quickly, which a summary proceeding contemplates, so that the other tenants can live in a drug-free environment. In these cases, justice done quickly and fairly is justice done for all.”

How the Program Got Started

Community activity was the impetus for starting the Narcotics Eviction Program. In 1986, when the owner of a three-story brownstone on Manhattan Avenue died without a will or heirs, the city’s public administrator assumed responsibility for the building. According to Judge Tom, who heard the case, “drug dealers ended up taking over the building, and the entire neighborhood degenerated.” Neighbors complained to the police, who made sev-

PROGRAM FOCUS

eral raids and numerous arrests, but the dealers would just return the next day, as soon as they were released on bail, or other dealers would take their place.

Although notified of the drug activity, the public administrator failed to take action. As a result, 26 homeowners and tenants who lived within 200 feet of the building hired their own attorney, subpoenaed police officers to testify, and asked Judge Tom to use the Real Property Actions and Proceedings Law to evict all the occupants and board up the building. The judge agreed and placed a lien on the building and ordered that proceeds of any future sale of the property be used to repay the neighbors' costs and attorney fees.

About the same time that this case was being decided, the Manhattan District Attorney's office came under criticism from the community for not doing enough to get rid of drug traffickers operating out of apartments. Staff reported that even

with aggressive police enforcement, the same or other drug traffickers often returned to the apartment. Morgenthau asked, "Why can't we evict these people?" With the recent neighbor-initiated case still fresh in mind, he came up with the idea of using the Real Property Actions and Proceedings Law on a systematic basis to remove drug dealers.

Two features of the Real Property Actions and Proceedings Law were particularly appealing. First, it permitted the district attorney to share certain police reports with landlords to facilitate evictions. In the past, when law-abiding tenants complained about drug-dealing neighbors, landlords—including the New York City Housing Authority—were usually unable or unwilling to remove the drug dealers. Part of the problem was that landlords had no legal access to police reports to present in court as evidence of illegal activity in their properties. Since most tenants refused to testify because they were afraid

the drug dealers would retaliate against them, this left the landlords with little, if any, evidence of illegal activity to present in court.

Second, because this previously neglected statute authorized a summary court proceeding, there would be no time-consuming hearings and few appeals. The requirements of due process would be met, however, because cases would be brought to court only after the tenant was given written notice. In addition, the tenant could come to court with an attorney, evidence would be presented in open court, and there would be opportunity for cross-examination. The court later agreed with this position.¹

What began as an experiment with a single, part-time assistant prosecutor and one paralegal has now evolved into a program with six assistant district attorneys who devote about one-quarter of their time to the program. A bureau chief and a deputy spend about half their time with the program, and five paralegals work between half- and full-time. There is also a full-time secretary. The program's operating budget is about \$300,000 a year, most of which comes from the district attorney's budget. Additional funding comes from State and Federal Government grants.

Measuring the Program's Success

The success of the Narcotics Eviction Program can be measured in several ways. The program has been able to remove drug traffickers in 98 percent of the cases it has taken to court. No successful legal challenges have been made to the Real Property Actions and Proceedings Law or to the program's application of the



Photo by Porter Gifford

Police Notes. A program assistant district attorney reviews a police officer's map of an apartment and his notes describing evidence he observed and seized.

PROGRAM FOCUS

Photo by Porter Gifford



Courtroom Scene. Judge Eileen Bransten listens to Gregory Abroe, a police officer, testify about an illegal narcotics business he observed during the police search of a drug dealer's apartment. Judge Bransten has stated, "The Narcotics Eviction Program can save a whole building—one bad apple can ruin the whole building, like an infestation."

Housing Authority Welcomes the Program's Assistance

More than 20 years ago, the New York City Housing Authority entered into a consent decree with tenant groups that requires the housing authority to conduct an administrative hearing for those tenants it attempts to evict on the grounds of undesirable behavior—even tenants who have been convicted and imprisoned. Because the hearing is lengthy, it prevents the housing authority from complying with the district attorney's request to evict tenants in a timely manner.

Although the Narcotics Eviction Program officially sues the housing authority in every case involving public housing, the program never seeks penalties or reimbursement fees from the authority. The housing authority cooperates willingly with the program to remove drug-trafficking tenants. In fact, when the program began, the chairman of the housing authority said

he was delighted that the district attorney was taking action to remove drug-dealing tenants in his buildings. According to Lawrence Roth, special counsel to the authority, "The DA has blazed trails in this area in using the Real Property Actions and Proceedings Law on a systematic scale. We think the DA's done so in an exemplary fashion."

Because the Narcotics Eviction Program has been so successful, the housing authority is seeking a Federal court ruling on whether the consent decree prevents it from initiating eviction proceedings on its own based on the Real Property Actions and Proceedings Law. If the court rules that the consent decree does not permit such action, the authority plans to seek a modification of the consent decree to permit the use of the civil statute.

statute. Another measure of success is the fact that drug dealers' businesses are being disrupted, improving the quality of life for law-abiding tenants.

High rate of evictions. Between June 1988 and August 1994, the program was

responsible for removing drug dealers from 2,005 locations. Most cases involved residential units, but many involved retail establishments (see "Fruit Stand Sales"). In over half of these cases, the tenant left before court action became necessary. In

the remaining cases, the court issued evictions (see figure 2). On 104 occasions, the program allowed the tenant to remain on condition of good behavior, typically because the prosecutor handling the case was convinced that the tenant of record was not involved in illegal activity, and the drug dealer had already been permanently removed.

The program has withdrawn 1 percent of its cases after filing, usually because a prosecutor discovered there was insufficient evidence to proceed. The court has dismissed another 20 eviction attempts (1 percent of the program's cases) because of insufficient evidence that an illegal business was being conducted or because the landlord (or program attorney) did not prove to the judge's satisfaction that the tenant was aware of the criminal activity.

Passing constitutional muster. No successful legal challenges have been made to the Real Property Actions and Proceedings Law or to the Narcotics Eviction Program's application of the statute. Constitutional law experts have identified certain eviction practices that might provide the basis for a successful legal challenge. Examples of these practices include targeting transactions that do not constitute a business (personal use or giving drugs to a friend) and not giving the tenant notice and an opportunity to be heard before an order of eviction. Such practices have been studiously avoided by the program.

Although some might believe that moving against a tenant both criminally and civilly violates the Constitution's prohibition against double jeopardy, legal scholars believe that eviction would not be double punishment. Proponents of the program argue that removing someone from an apartment constitutes an administrative remedy that serves reasonable regulatory

Fruit Stand Sales

Employees of a deli supermarket were selling drugs from a fruit stand on the sidewalk just outside the store, keeping the drugs hidden under some melons. Although the police had arrested one store employee, the problem was not eliminated. The supermarket owner was usually inside the store and claimed he knew nothing about what was going on at his fruit stand outside. The community was very concerned and wanted action.

The Narcotics Eviction Program arranged a settlement in which the court issued a warrant of eviction but stayed its execution. The owner agreed that if any more drug dealing occurred within 10 feet of the store perimeter, the district attorney would seek to have the stay lifted and the owner evicted. The police have since made a number of undercover buys, observed numerous sales occurring within the 10-foot limit, and made several arrests. As a result, the program is seeking eviction.

goals of removing a public nuisance and remedying a violation of the tenant's rental agreement. Only the criminal case results in actual punishment for the drug dealer.

On August 10, 1994, a New York State appellate court agreed with program proponents when it ruled that evicting a tenant under the statute was not a violation of double jeopardy, even though the evidence in the civil case was based on the same facts that had already been used to convict the tenant of a criminal narcotics offense.²

Putting drug dealers out of business.

After an eviction, the program encourages neighbors to report any new drug trafficking that occurs in the re-rented apartment. A few dealers do try to return. According to Detective James Gilmore, on one occasion "as we were coming down the stairs with the marshals after sealing an apartment, the dealers were already coming back in through the fire escape and the back window, so we have to watch the rear of the building when we do an eviction." Gary Galperin notes that on rare occasions the program has had to force out a second set of dealers from the same apartment after the first group was removed. However, most dealers have left permanently.

Of course, these drug dealers may set up shop in another apartment building or

neighborhood and create an intolerable situation for a new set of neighbors. According to Judge Tom, however, the drug dealers "lose their business, not just their apartment," because they have to reestablish operations in a new location where they usually have to compete with other well-established drug dealers protecting their own turf. Drug users in the new neighborhood may also be unwilling to do business with a relocated drug trafficker because they are unfamiliar with the particular brand of drug the new dealer sells.

Improving the quality of life for law-abiding tenants.

Perhaps the best measure of the program's success comes from tenants and neighbors whose safety and tranquility have been restored after a drug trafficker operating in their building has been forced out.

A tenant's quality of life is often severely eroded by drug trafficking in the building. Drug dealers and their customers can monopolize elevators, race noisily up and down stairs, create a ruckus throughout the night, and resort to violence against other drug dealers and customers. In addition, drug traffickers attract addicts and thieves

who cause further disruption, instill fear in other tenants, and transform the entire neighborhood into an unsightly danger zone.

The Narcotics Eviction Program helps people who have the fewest options for improving their living conditions. Most of the tenants affected by these disruptions do not have the money to move to a drug-free neighborhood. When the program removes drug dealers from public housing units, these apartments become available to some of the city's more than 200,000 families on the 5-year waiting list to enter subsidized housing.

Keys to the Program's Success

Without the support of the Manhattan District Attorney, the police, and the community, the program might have been doomed to failure. But the close collaboration of these players who have used a



Office Meeting. Gary J. Galperin, head of the Narcotics Eviction Program [left], confers with Emil Loresto, a program paralegal, about whether to proceed with a case in which the tenant of record denied knowledge that drug dealing was taking place in her apartment.

Photo by Porter Gifford

Federal Forfeiture Proceedings

When a landlord refuses to try to remove drug dealers from a given building, the Narcotics Eviction Program refers the case to the U.S. Attorney for the Southern District of New York. Usually, these referrals involve large apartment buildings in which drug dealing is taking place in several units. These uncooperative landlords may consider the \$5,000 fine allowed under the Real Property Actions and Proceedings Law trivial, or they may be receiving pay-offs from the drug dealers.

New York State's civil forfeiture statute does not permit the State to seize buildings. However, a Federal civil forfeiture statute (21 U.S.C. Section 881) enables the U.S. Attorney's Asset Forfeiture Unit to force out drug dealers by seizing property that is being used to commit a felony.

The Asset Forfeiture Unit selects its cases after thorough investigation to ensure that there is ample evidence to win a suit. As a result, a Federal magistrate who was initially concerned that the U.S. Attorney would not have enough evidence to justify forfeiture of a property could report that "In all the cases I have heard, the evidence has always been overwhelming."

The U.S. Attorney in New York focuses on buildings in which several tenants are engaged in drug dealing and the trafficking is disturbing other residents. For instance, in one operation, 100 law enforcement officers participated in the virtual military takeover of a building in which drug dealers were using 19 of 40 apartments to sell drugs.

Pursuing the case. When the forfeiture unit decides to pursue a case, the U.S. Attorney presents a complaint to a Federal magistrate offering probable cause to support civil forfeiture under Section 881.

The U.S. Attorney then posts the court summons and complaint at the building in question and mails them to the landlord.

Most landlords, realizing they stand to lose their property for good, negotiate a settlement. In the typical settlement, the U.S. Attorney, having already seized the property, enters into a 5-year agreement with the landlord, who agrees to evict the drug-dealing tenants, correct municipal code violations, make improvements in lighting and security, and refurbish the units as a condition of getting the property back. The U.S. Marshal keeps the rent money in an escrow account until the property is returned. However, the property owner must pay for the expenses of the entire seizure—in one case, including payment of an armed guard at the building for 3 months.

Occasionally, the landlord refuses to cooperate or has abandoned the property. In such instances, the U.S. Attorney takes legal ownership of the building and enters into occupancy agreements with the tenants, with the U.S. Marshal in effect becoming the landlord. The marshal sells the property, and the proceeds of the sale are deposited in the Federal Asset Forfeiture Fund along with property from other forfeiture cases nationwide involving the U.S. Department of Justice. Much of this money—\$12.6 million in 1993—is returned to U.S. Attorneys around the country and to Federal and local law enforcement agencies that participate in forfeiture cases.

Since 1987, the unit has completed the seizure of 117 properties, including 8 commercial establishments. Of these seized properties, 7 were returned after settlement discussions, and 6 were forfeited

after trial. The remaining 104 properties were either forfeited after the owners failed to respond or are still in settlement discussions. As of the end of 1993, the New York Asset Forfeiture Unit had 101 active civil forfeiture cases involving properties being used for drug dealing.

Advantages of Federal approach. A significant advantage of the U.S. Attorney's civil approach is the comparative ease and speed with which the Government can rid private residential apartments of drug dealing. What used to take 1–3 years in a criminal prosecution now usually takes about 6 weeks. The lower burden of proof in large part explains this speed. Although U.S.C. Section 881 requires the commission of an illegal act, the U.S. Attorney does not have to convict anyone of a crime in order to obtain a civil forfeiture.

Another advantage of civil forfeiture is that a building can be taken over regardless of the current status of the owner. Even if the owner is dead, has fled, or cannot otherwise be reached, the property remains forfeitable because the property itself, and not any individual, is the defendant in the suit.

According to a Federal judge who has heard several forfeiture cases, "Extraordinary remedies are needed in cases of drug dealing. Some people slip through the criminal justice system, and this type of repeat behavior is not being addressed because no court looks at the totality of the offender's record. Besides, the offender can be jailed after a criminal trial and another family member simply continues the business." Civil forfeiture can often overcome these obstacles and put a stop to the rampant drug trafficking in large apartment buildings.

PROGRAM FOCUS

civil remedy and a special court to handle the evictions has ensured the program's success.

Support from the top. Manhattan District Attorney Robert Morgenthau has always given the program his full support. When he initiated the program, he announced it personally, and he has treated it as a flagship program ever since. Why? The program is "effective in responding to a serious community problem," he said. "If we can close down the whole drug-dealing operation, we can have a significant impact. No other individual step we take addresses the drug-trafficking problem as effectively in a building where people live, and there's nothing more important than recapturing housing stock so that people can live safely in their homes."

At every opportunity, Mr. Morgenthau mentions the program's success—at city council meetings, in public speaking engagements, and during police-community fellowship breakfasts. When the Federal Office of National Drug Control Policy (ONDCP) announced the availability of drug enforcement grants, Morgenthau chose to submit an application to expand the Narcotics Eviction Program. ONDCP awarded a grant for \$490,000. He has provided the program with additional assistant district attorneys, paralegals, and computers.

Close collaboration with the police. It is sometimes difficult to arrange for police officers to testify at trials when they are on special assignment or task forces that limit their availability during normal court hours. The program, however, calls the precinct commander to arrange for hard-to-reach officers to testify. The program can also request officers from community policing units to visit apartments after

successful evictions to determine whether drug activity has resumed.

The program is careful not to jeopardize criminal prosecution of drug dealers targeted for removal. Because criminal defendants have the right to obtain certain testimony given in a civil eviction case and possibly use it in their defense, the program occasionally postpones its civil case until the criminal case is completed. The program may also delay or even drop the civil case if a tenant who appears to be permitting drug dealing in his or her apartment turns out to be a confidential informant in a criminal prosecution or is cooperating with the police in connection with an investigation (for example, of drug dealing on the next block).

Support from the community. Robert Morgenthau has said that "community interaction has been and will continue to be an integral part of the Narcotics Eviction Program." For example, Manhattan has 12 community boards that meet monthly to vote on land use, sanitation, schooling, and criminal matters. Someone from the district attorney's Community Affairs Unit attends every board meeting and is able to provide an update on program activities with the community. Board members, in turn, bring information about drug-trafficking operations to the attention of the district attorney's representative.

Program prosecutors and paralegals attend tenant association and community meetings in which they describe the program and explain how residents can work with the program and police to try to rid apartments or storefronts of drug operations. According to a tenant association president, "The word has gotten out that we don't have to testify if we report the drug dealers."

Using a civil remedy. As First Assistant District Attorney Barbara Jones puts it, "Using the Real Property Actions and Proceedings Law was a way to learn that there are other methods of getting at criminals. There are civil remedies, and we have to be prepared to try them."

In addition, the civil approach offers both a tempting carrot and a powerful stick for the landlord. The carrot: Eviction enables landlords to raise the rent of a new tenant (rent control and rent stabilization procedures in New York City make it very difficult to increase the rents of existing tenants). The stick: The civil court can fine landlords \$5,000 for refusing to act, and landlords can be referred to the U.S. Attorney for a forfeiture proceeding if they do not make a good faith effort to force out drug dealers (see "Federal Forfeiture Proceedings").

Using a special court. To expedite evictions, New York City appointed one presiding judge to a special part of the Manhattan civil court to handle cases brought under the Narcotics Eviction Program. As a result, cases are scheduled for trial within 2–4 weeks after the first court appearance. According to Gary Galperin, "This special court is especially sensitive to the welfare of law-abiding neighbors as well as the rights of tenants whose eviction we're seeking."

Because of the disruption dealers create for law-abiding tenants, the clerk's office gives priority to scheduling Narcotics Eviction Program cases for initial court dates. The clerk's office also gives priority among the hundreds of cases it processes each week to issuing program eviction warrants.

High praise from the community. Perhaps the best endorsement of the Narcot-

ics Eviction Program comes from the community members whose safety and tranquility have been restored after a drug trafficker's departure. Irving Hirsch, the program's first head, likes to tell about the time when two police officers were leaving an apartment building right after they had evicted a drug-dealing family. The officers, he said, were pleasantly surprised when several other tenants opened their apartment doors to applaud and give them the thumbs-up sign.

According to the president of one tenant organization, tenants are very verbal about how delighted they are, "Our tenants said that whereas once they were afraid to have a picnic on the playground in their housing complex, now they feel safer and are finally able to have one. We all feel a little more relaxed because we know something is being done. We're not just being fed words and promises."

Notes

¹ N.Y. County District Attorney's Office v. Oquendo, 147 Misc.2d 125 (N.Y.C. Civ. Ct., N.Y.Co. 1990).

² City of New York v. Wright, 162 Misc.2d 572 (App. Term, 1st Dept. 1994).

About This Study

This Program Focus was written by Peter Finn, research associate at Abt Associates Inc. More information on the issues of civil remedies as an approach to enforcement is available in the Issues and Practices report *Using Civil Remedies for Criminal Behavior: Rationale, Case Studies, and Constitutional Issues*, NCJ 151757, which can be obtained from the National Criminal Justice Reference Service. (Call 800-851-3420 or e-mail askncjrs@ncjrs.aspensys.com) For further information about the Narcotics Eviction Program, contact Gary J. Galperin, Esq., Chief, or Ralph Fabrizio, Esq., Deputy Chief, Special Projects Bureau/Narcotics Eviction Program, Manhattan District Attorney's Office, One Hogan Place, New York, NY 10013, (212) 335-4370.

COVER: Community Meeting. District Attorney Robert M. Morgenthau (at the podium) attends a community meeting to hear about criminal justice issues, including drug dealing, and to offer assistance in addressing them. (Photo by Porter Gifford)

Findings and conclusions reported here are those of the author and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, Bureau of Justice Statistics, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

NCJ 153146

May 1995

U.S. Department of Justice

Office of Justice Programs

National Institute of Justice

Washington, DC 20531

Official Business

Penalty for Private Use \$300

BULK RATE
POSTAGE & FEES PAID
DOJ/NIJ
Permit No. G-91